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2
3 UNITED STATES DISTRICT COURT
4 EASTERN DISTRICT OF CALIFORNIA
5

6 GUILLERMO CRUZ TRUJILLO,

7 Plaintiff,

8 v.

9 GOMEZ, et al.,

10 Defendants.

Case No. 1:14-cv-01370-LJO-EPG (PC)

FINDINGS AND RECOMMENDATIONS
TO DISMISS CLAIMS CONSISTENT
WITH MAGISTRATE JUDGE'S PRIOR
ORDER IN LIGHT OF WILLIAMS
DECISION

(ECF NOS. 17 & 19)

OBJECTIONS, IF ANY, DUE WITHIN
FOURTEEN (14) DAYS

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13 Guillermo Trujillo ("Plaintiff") is a state prisoner proceeding *pro se* and *in forma*
14 *pauperis* in this civil rights action filed pursuant to 42 U.S.C. § 1983. Plaintiff consented to
15 magistrate judge jurisdiction. (ECF No. 5). Defendants declined to consent to magistrate judge
16 jurisdiction. (ECF No. 46).

17 The Court previously screened Plaintiff's complaint before Defendants appeared. (ECF
18 No. 19). The Court found that Plaintiff stated cognizable claims against Gomez, Juarez, and
19 Fernandez for excessive force in violation of the Eighth Amendment, and dismissed all other
20 claims and defendants. (Id.).

21 As described below, in light of Ninth Circuit authority, this Court is recommending that
22 the assigned district judge dismiss claims and defendants consistent with the order by the
23 magistrate judge at the screening stage.

24 **I. WILLIAMS v. KING**

25 On November 9, 2017, the United States Court of Appeals for the Ninth Circuit held
26 that a magistrate judge lacked jurisdiction to dismiss a prisoner's case for failure to state a
27 claim at the screening stage where the Plaintiff had consented to magistrate judge jurisdiction
28 and defendants had not yet been served. Williams v. King, 875 F.3d 500 (9th Cir. 2017).

1 Specifically, the Ninth Circuit held that “28 U.S.C. § 636(c)(1) requires the consent of all
2 plaintiffs and defendants named in the complaint—irrespective of service of process—before
3 jurisdiction may vest in a magistrate judge to hear and decide a civil case that a district court
4 would otherwise hear.” Id. at 501.

5 Here, the defendants were not served at the time the Court issued its order dismissing
6 claims and defendants, and therefore had not appeared or consented to magistrate judge
7 jurisdiction. Accordingly, the magistrate judge lacked jurisdiction to dismiss claims and
8 defendants based solely on Plaintiff’s consent.

9 In light of the holding in Williams, this Court will recommend to the assigned district
10 judge that he dismiss the claims and defendants previously dismissed by this Court, for the
11 reasons provided in the Court’s screening order.

12 **II. SCREENING REQUIREMENT**

13 The Court is required to screen complaints brought by prisoners seeking relief against a
14 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a).
15 The Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are
16 legally “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or
17 that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C.
18 § 1915A(b)(1), (2). As Plaintiff is proceeding *in forma pauperis* (ECF No. 7), the Court may
19 also screen the complaint under 28 U.S.C. § 1915. “Notwithstanding any filing fee, or any
20 portion thereof, that may have been paid, the court shall dismiss the case at any time if the court
21 determines that the action or appeal fails to state a claim upon which relief may be granted.”
22 28 U.S.C. § 1915(e)(2)(B)(ii).

23 A complaint is required to contain “a short and plain statement of the claim showing
24 that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are
25 not required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere
26 conclusory statements, do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell
27 Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). Plaintiff must set forth “sufficient
28 factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” Id.

1 (quoting Twombly, 550 U.S. at 570). The mere possibility of misconduct falls short of meeting
2 this plausibility standard. Id. at 679. While a plaintiff's allegations are taken as true, courts
3 "are not required to indulge unwarranted inferences." Doe I v. Wal-Mart Stores, Inc., 572 F.3d
4 677, 681 (9th Cir. 2009) (internal quotation marks and citation omitted). Additionally, a
5 plaintiff's legal conclusions are not accepted as true. Iqbal, 556 U.S. at 678.

6 Pleadings of *pro se* plaintiffs "must be held to less stringent standards than formal
7 pleadings drafted by lawyers." Hebbe v. Pliler, 627 F.3d 338, 342 (9th Cir. 2010) (holding that
8 *pro se* complaints should continue to be liberally construed after Iqbal).

9 **III. SUMMARY OF THIRD AMENDED COMPLAINT**

10 Plaintiff's Third Amended Complaint ("TAC") alleges that on December 23, 2013,
11 Plaintiff was confined at Kern Valley State Prison ("KVSP") when prison officials started
12 harassing and fomenting rumors of "getting" Plaintiff, and targeting him because Plaintiff had
13 filed 602 grievances, which were never logged and were returned to Plaintiff.

14 On January 1, 2014, Plaintiff personally contacted Defendant M. Biter, warden of
15 KVSP, and asked him to stop his coworkers from constantly verbally harassing Plaintiff and
16 fomenting rumors and violence against him.

17 On October 22, 2014, Plaintiff went to school and told Officer Gomez that Plaintiff
18 needed to get his legal copies of a motion to file with the courts. On Plaintiff's way back to the
19 building from class due to not feeling well, Plaintiff stopped at the law library for legal copies.
20 On the way back from the law library, Officer Gomez approached Plaintiff from behind and
21 asked if Plaintiff was going to school. Plaintiff responded no. Officer Gomez became very
22 upset and slammed Plaintiff against the concrete wall next to the library outside window, face-
23 first, and twisted his arms to place them in restraints. Plaintiff felt pain on the left side of his
24 face and his shoulders.

25 Officer Gomez told Plaintiff to go to the facility program holding cell area for a strip
26 search. Plaintiff complied. After the search and still naked inside the holding cage, Officers
27 Juarez and Fernandez took out their pepper spray and sprayed Plaintiff for 4 to 5 seconds.
28 Plaintiff believes the officers used force out of retaliation and harassment.

1 Defendant Biter failed to correct and remand his coworkers for their excessive force.
2 Defendant Biter refused to reprimand officials' actions when Plaintiff filed his complaints.

3 Plaintiff alleges violations of his First, Eighth, and Fourteenth Amendment rights.

4 Plaintiff's Third Amended Complaint only named Defendant Biter in the list of
5 defendants. At times, when Plaintiff discusses Officer Gomez, he refers to him as "Defendant
6 Gomez." Plaintiff never indicates in his complaint that Sergeant Juarez or Fernandez were
7 meant to be included as defendants.¹

8 **IV. EVALUATION OF PLAINTIFF'S THIRD AMENDED COMPLAINT**

9 The Civil Rights Act under which this action was filed provides:

10 Every person who, under color of any statute, ordinance, regulation, custom, or
11 usage, of any State or Territory or the District of Columbia, subjects, or causes
12 to be subjected, any citizen of the United States or other person within the
13 jurisdiction thereof to the deprivation of any rights, privileges, or immunities
14 secured by the Constitution and laws, shall be liable to the party injured in an
15 action at law, suit in equity, or other proper proceeding for redress

16 42 U.S.C. § 1983.

17 "[Section] 1983 'is not itself a source of substantive rights,' but merely provides 'a
18 method for vindicating federal rights elsewhere conferred.'" Graham v. Connor, 490 U.S. 386,
19 393-94 (1989) (quoting Baker v. McCollan, 443 U.S. 137, 144 n.3 (1979)); see also Chapman
20 v. Houston Welfare Rights Org., 441 U.S. 600, 618 (1979); Hall v. City of Los Angeles, 697
21 F.3d 1059, 1068 (9th Cir. 2012); Crowley v. Nevada, 678 F.3d 730, 734 (9th Cir. 2012);
22 Anderson v. Warner, 451 F.3d 1063, 1067 (9th Cir. 2006).

23 To state a claim under section 1983, a plaintiff must allege that (1) the defendant acted
24 under color of state law, and (2) the defendant deprived him of rights secured by the
25 Constitution or federal law. Long v. County of Los Angeles, 442 F.3d 1178, 1185 (9th Cir.
26 2006); see also Marsh v. Cnty. of San Diego, 680 F.3d 1148, 1158 (9th Cir. 2012) (discussing
27 "under color of state law"). A person deprives another of a constitutional right, "within the
28 meaning of § 1983, 'if he does an affirmative act, participates in another's affirmative act, or

¹ Plaintiff later clarified that Gomez, Juarez, and Fernandez were meant to be included as defendants. (ECF No. 20).

1 omits to perform an act which he is legally required to do that causes the deprivation of which
2 complaint is made.” Preschooler II v. Clark Cnty. Sch. Bd. of Trs., 479 F.3d 1175, 1183 (9th
3 Cir. 2007) (quoting Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978)). “The requisite
4 causal connection may be established when an official sets in motion a ‘series of acts by others
5 which the actor knows or reasonably should know would cause others to inflict’ constitutional
6 harms.” Preschooler II, 479 F.3d at 1183 (quoting Johnson, 588 F.2d at 743). This standard of
7 causation “closely resembles the standard ‘foreseeability’ formulation of proximate cause.”
8 Arnold v. Int’l Bus. Mach. Corp., 637 F.2d 1350, 1355 (9th Cir. 1981); see also Harper v. City
9 of Los Angeles, 533 F.3d 1010, 1026 (9th Cir. 2008).

10 1. EXCESSIVE FORCE IN VIOLATION OF THE EIGHTH AMENDMENT

11 The Eighth Amendment prohibits those who operate our prisons from using “excessive
12 physical force against inmates.” Farmer v. Brennan, 511 U.S. 825 (1994); Hoptowit v. Ray,
13 682 F.2d 1237, 1246, 1250 (9th Cir. 1982) (prison officials have “a duty to take reasonable
14 steps to protect inmates from physical abuse”); see also Vaughan v. Ricketts, 859 F.2d 736, 741
15 (9th Cir. 1988), cert. denied, 490 U.S. 1012 (1989) (“prison administrators’ indifference to
16 brutal behavior by guards toward inmates [is] sufficient to state an Eighth Amendment claim”).
17 As courts have succinctly observed, “[p]ersons are sent to prison as punishment, not *for*
18 punishment.” Gordon v. Faber, 800 F.Supp. 797, 800 (N.D. Iowa 1992) (citation omitted),
19 *aff’d*, 973 F.2d 686 (8th Cir. 1992). “Being violently assaulted in prison is simply not ‘part of
20 the penalty that criminal offenders pay for their offenses against society.’ ” Farmer, 511 U.S. at
21 834, 114 S.Ct. at 1977 (quoting Rhodes, 452 U.S. at 347).

22 Plaintiff’s Third Amended Complaint states a claim against Officers Gomez, Juarez,
23 and Fernandez for excessive force in violation of the Eighth Amendment. Taking Plaintiff’s
24 allegations as true and liberally construing them in Plaintiff’s favor, Plaintiff alleges that
25 Gomez, Juarez, and Fernandez used unprovoked force against Plaintiff when Gomez slammed
26 Plaintiff against the wall and twisted his arms, and then when Juarez and Fernandez sprayed
27 Plaintiff with pepper spray.

28 Plaintiff also alleges an Eighth Amendment excessive force claim against Defendant

1 Biter, as warden, in his supervisory capacity for failing to prevent this excessive force. As was
2 explained in the prior screening order in this case:

3 [S]upervisory personnel may not be held liable under section 1983 for the
4 actions of subordinate employees based on *respondeat superior* or vicarious
5 liability. *Crowley v. Bannister*, 734 F.3d 967, 977 (9th Cir. 2013); *accord*
6 *Lemire v. California Dep't of Corr. and Rehab.*, 726 F.3d 1062, 1074–75 (9th
7 Cir. 2013); *Lacey v. Maricopa County*, 693 F.3d 896, 915–16 (9th Cir. 2012) (en
8 banc). “A supervisor may be liable only if (1) he or she is personally involved in
9 the constitutional deprivation, or (2) there is a sufficient causal connection
10 between the supervisor’s wrongful conduct and the constitutional violation.”
11 *Crowley*, 734 F.3d at 977 (internal quotation marks omitted); *accord Lemire*,
12 726 F.3d at 1074–75; *Lacey*, 693 F.3d at 915–16. “Under the latter theory,
13 supervisory liability exists even without overt personal participation in the
14 offensive act if supervisory officials implement a policy so deficient that the
15 policy itself is a repudiation of constitutional rights and is the moving force of a
16 constitutional violation.” *Crowley*, 734 F.3d at 977 (citing *Hansen v. Black*, 885
17 F.2d 642, 646 (9th Cir.1989)) (internal quotation marks omitted).

18 (ECF No. 16, p. 3-4). There are no allegations in the TAC that Defendant Biter himself used
19 excessive force, or authorized or otherwise contributed directly to Gomez, Juarez and
20 Fernandez’s use of force. Additionally, there are no facts alleged that show (or would allow the
21 Court to draw the reasonable inference) that there was any causal connection between
22 Defendant Biter’s conduct and the alleged Eighth Amendment violation. Accordingly, Plaintiff
23 fails to state a claim for violation of the Eighth Amendment against Defendant Biter.

2. RETALIATION IN VIOLATION OF THE FIRST AMENDMENT

24 Allegations of retaliation against a prisoner's First Amendment rights to speech or to
25 petition the government may support a section 1983 claim. *Silva v. Di Vittorio*, 658 F.3d 1090,
26 1104 (9th Cir. 2011); *Rizzo v. Dawson*, 778 F.2d 527, 532 (9th Cir. 1985); *see also*
27 *Valandingham v. Bojorquez*, 866 F.2d 1135 (9th Cir. 1989); *Pratt v. Rowland*, 65 F.3d 802,
28 807 (9th Cir. 1995). “Within the prison context, a viable claim of First Amendment retaliation
entails five basic elements: (1) An assertion that a state actor took some adverse action against
an inmate (2) because of (3) that prisoner's protected conduct, and that such action (4) chilled
the inmate's exercise of his First Amendment rights, and (5) the action did not reasonably

1 advance a legitimate correctional goal.” Rhodes v. Robinson, 408 F.3d 559, 567-68 (9th Cir.
2 2005); accord Watison v. Carter, 668 F.3d 1108, 1114-15 (9th Cir. 2012); Silva, 658 at 1104;
3 Brodheim v. Cry, 584 F.3d 1262, 1269 (9th Cir. 2009).

4 Plaintiff repeatedly asserts that the officers assaulted him because he filed 602
5 grievances. However, Plaintiff fails to set forth any specific factual allegations supporting this
6 conclusion. He does not allege that the officers said anything to indicate that their assault was
7 in retaliation for Plaintiff filing grievances, or that the assault happened closely in time to the
8 602 grievances. In reviewing a complaint, the court must (1) accept as true all of the factual
9 allegations contained in the complaint, unless they are clearly baseless or fanciful, (2) construe
10 those allegations in the light most favorable to the plaintiff, and (3) resolve all doubts in the
11 plaintiffs' favor. See Neitzke, 490 U.S. at 327; Erickson v. Pardus, 551 U.S. 89, 94 (2007); Von
12 Saher v. Norton Simon Museum of Art at Pasadena, 592 F.3d 954, 960 (9th Cir. 2010); Hebbe
13 v. Pliler, 627 F.3d 338, 340 (9th Cir. 2010). However, the court need not accept as true legal
14 conclusions cast in the form of factual allegations. See Western Mining Council v. Watt, 643
15 F.2d 618, 624 (9th Cir. 1981); Sprewell v. Golden State Warriors, 266 F.3d 979, 988 (9th Cir.),
16 as amended, 275 F.3d 1187 (2001).

17 Because Plaintiff’s statements that these actions were done in retaliation are legal
18 conclusions cast in the form of factual allegations, the Court need not accept them as true in
19 determining whether Plaintiff states a claim for retaliation. Because there are no facts alleged
20 that indicate that Defendants assaulted Plaintiff because Plaintiff engaged in protected conduct,
21 the Court finds that Plaintiff fails to state a claim for retaliation in violation of the Eighth
22 Amendment.

23 3. LACK OF DUE PROCESS IN VIOLATION OF THE FOURTEENTH
24 AMENDMENT

25 Prisoners have a right under the First and Fourteenth Amendments to litigate claims
26 challenging their sentences or the conditions of their confinement without direct interference
27 from prison officials. Lewis v. Casey, 518 U.S. 343, 350 (1996); Silva v. Di Vittorio, 658 F.3d
28 1090, 1103 (9th Cir. 2011); Bounds v. Smith, 430 U.S. 817, 824–25 (1977). However, the

1 right of access is merely the right to bring to court a grievance the inmate wishes to present,
2 and is limited to direct criminal appeals, habeas petitions, and civil rights actions. Lewis, 518
3 U.S. at 354. To claim a violation of this right, a plaintiff must show that he has suffered an
4 actual injury as a result of the alleged interference. Christopher v. Harbury, 536 U.S. 403, 415
5 (2002); Lewis, 518 U.S. at 351. In other words, he must be able to show that the deprivation
6 has directly impacted the relevant litigation in a manner adverse to him. Id. at 348 (defining
7 “actual injury” as “actual prejudice with respect to contemplated or existing litigation, such as
8 the inability to meet a filing deadline or to present a claim”).

9 Defendants’ actions in responding to Plaintiff’s appeals, alone, cannot give rise to any
10 claims for relief under section 1983 for violation of due process. “[A prison] grievance
11 procedure is a procedural right only, it does not confer any substantive right upon the inmates.”
12 Buckley v. Barlow, 997 F.2d 494, 495 (8th Cir. 1993) (citing Azeez v. DeRobertis, 568 F.
13 Supp. 8, 10 (N.D. Ill. 1982)); see also Ramirez v. Galaza, 334 F.3d 850, 860 (9th Cir. 2003) (no
14 liberty interest in processing of appeals because no entitlement to a specific grievance
15 procedure); Massey v. Helman, 259 F.3d 641, 647 (7th Cir. 2001) (existence of grievance
16 procedure confers no liberty interest on prisoner); Mann v. Adams, 855 F.2d 639, 640 (9th Cir.
17 1988). “Hence, it does not give rise to a protected liberty interest requiring the procedural
18 protections envisioned by the Fourteenth Amendment.” Azeez, 568 F. Supp. at 10; Spencer v.
19 Moore, 638 F. Supp. 315, 316 (E.D. Mo. 1986).

20 Plaintiff has alleged that his 602 grievances regarding the force incident and other
21 harassment were not properly addressed by the prison. However, he does not allege that he was
22 prejudiced in his ability to pursue litigation as a result. Therefore Plaintiff’s allegations
23 regarding the grievance procedure do not state a claim for violation of the constitution.

24 **V. CONCLUSION AND RECOMMENDATIONS**

25 For the foregoing reasons, IT IS HEREBY RECOMMENDED that all claims and
26 defendants, except for Plaintiff’s claims against Officers Gomez, Juarez, and Fernandez for
27 excessive force in violation of the Eighth Amendment, be DISMISSED.

28 These findings and recommendations are submitted to the United States District Judge

1 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within fourteen
2 (14) days after being served with these findings and recommendations, any party may file
3 written objections with the court. Such a document should be captioned “Objections to
4 Magistrate Judge's Findings and Recommendations.” Any reply to the objections shall be
5 served and filed within seven (7) days after service of the objections. The parties are advised
6 that failure to file objections within the specified time may result in the waiver of rights on
7 appeal. Wilkerson v. Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing Baxter v. Sullivan,
8 923 F.2d 1391, 1394 (9th Cir. 1991)).

9
10 IT IS SO ORDERED.

11 Dated: December 26, 2017

12 /s/ Eric P. Gray
13 UNITED STATES MAGISTRATE JUDGE
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